IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 8153 of 2007(U)

PETITIONER:

DR.AJAY B, SENIOR LECTURER IN FORENSIC
MEDICINE, T.D.MEDICAL COLLEGE, ALAPPUZHA.

BY ADV. SRI.A.JAYASANKAR
SRI.MANU GOVIND

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
SECRERIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM.

BY GOVT.PLEADER SRI.A.J.VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. Basheer, J.

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W.P(C) No. 8153 of 2007-U

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Dated this the 16th day of March, 2007.

J U D G M E N T

Petitioner is serving as Senior Lecturer in Forensic Medicine in the T.D. Medical College, Alappuzha. He challenges Ext.P5 memo of charges issued to him by the Government.

2. Petitioner faced departmental action for his failure to conduct autopsy on the dead bodies of 4 persons who lost their lives in an unfortunate road traffic accident on February 10, 2006. It is not in dispute that petitioner who was requested to conduct autopsy on the dead bodies refused to do so on the plea that he was not supposed to conduct it after sunset, in view of Government Circular dated September 4, 1984. A copy of the said circular is on record as Ext.P1. It is true that in Ext.P1 circular the Government had referred to Modi's Medical Jurisprudence and Toxicology and informed the officials concerned that post mortem shall be conducted in day light and not in artificial light, as far as possible, and that it should be thorough and complete as circumstances permit. Therefore the Government instructed the District Collectors, Superintendents of Police, Revenue Divisional Officers and District Police Surgeons to scrupulously follow the instructions contained in the circular. Apparently taking shelter under the above circular the petitioner refused to conduct autopsy, inspite of the requests made by the District Collector and other officials.

3. It is on record that the officials had pointed out that the near

relatives of the victims of the accident were understandably agitated because bodies of the victims had been totally mutilated in the accident and could not be kept for another day. Officials wanted to ensure that the autopsy was finished as soon as possible to pacify the agitated family members, so that the bodies could be released to them expeditiously after completing the formalities.

4. It appears that the petitioner took an adamant stand and refused to conduct the autopsy. It was in the above circumstances that Ext.P5 memo of charges was issued to him.

5. Initially the disciplinary authority approved the stand taken by the petitioner. However the Government took a different view and thought it fit to take departmental action against the petitioner after hearing him. The Government considered the report of enquiry in this case. It was noticed that there were materials to indicate that petitioner had shown manifest insubordination and dereliction of duty and that there was clear violation of the Government Servants' Conduct Rules 1960. It was also noticed that the Enquiry Committee had not followed the procedure laid down in Kerala Civil Service (CC &A) Rules. In the above circumstances the Government thought it fit to over-rule the decision of the lower authority to continue with the disciplinary action taken against the petitioner.

Having perused Ext.P4 order I do not find any material illegality or irregularity in the decision of the Government to proceed with the disciplinary enquiry against the petitioner. Admittedly petitioner has been served with Ext.P5 memo of charges. Instead of responding to Ext.P5 memo, petitioner has rushed to this court with this writ petition

praying for quashing the same. He ought to have responded to the memo of charges and shown his reasons as to why he was not liable to be proceed against. I do not find any merit in the contention raised by the petitioner.

Writ Petition fails and it is accordingly dismissed.

A.K. Basheer

Judge.